

**SENATE—Monday, February 7, 2005**

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

**PRAYER**

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, source of all life, today we offer You ourselves, thanking You for the opportunity to serve You and country. Forgive us for being silent when we should speak, for being useless when we could be useful. Watch over and protect our Nation's military. Give our warriors courage as they face the foe and skill in performing their duty. Bless our lawmakers. Give them steadfast hearts which no unworthy thought can drag downward and no tribulation can wear out. Teach them to serve You as You deserve, to give and not count the cost, to toil and not seek for rest, to labor and not ask for any reward except that of knowing that they are doing Your will.

Use each of us to build a world fit to live in. We pray in Your wonderful name. Amen.

**PLEDGE OF ALLEGIANCE**

The PRESIDENT pro tempore led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**RESERVATION OF LEADER TIME**

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

**MORNING BUSINESS**

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business with Senators permitted to speak therein for up to 10 minutes each.

**RECOGNITION OF THE MAJORITY LEADER**

The PRESIDENT pro tempore. The majority leader is recognized.

**SCHEDULE**

Mr. FRIST. Mr. President, today we have a period of morning business until 3 this afternoon, and at 3 we will begin consideration of S. 5, the class action fairness bill. The agreement reached

last week provides for debate only and requires amendments to be limited to the subject matter of the bill. I encourage Members to make their opening statements today so that we may begin the amendment process early tomorrow.

I thank the Democratic leader for his cooperation as we begin the class action legislation. We have a short list of possible amendments from the other side. I hope we can lock in an exclusive list at the earliest time to facilitate management of the bill. I don't want to encourage amendments, but I would forewarn all Senators, if they intend to offer an amendment to the class action bill they should notify their respective chairmen just as soon as possible and notify the cloakrooms as well.

In addition to beginning the debate on the class action bill today, we will also consider a resolution relating to the recent elections in Iraq. That resolution has been circulated, and we expect to have a rollcall vote on the resolution at 5:30 this afternoon. We hope to have that agreement locked in shortly, and we will alert Members accordingly when consent is granted for that vote.

I also would announce that the Homeland and Governmental Affairs Committee is expected to report the nomination of Michael Chertoff to be Secretary of Homeland Security. Clearly we will want to schedule that important nomination for floor action as soon as possible.

I yield the floor. I will have a few minutes on leader time shortly but would be happy to turn to the Democratic leader.

**RECOGNITION OF THE MINORITY LEADER**

The PRESIDENT pro tempore. The Democratic leader is recognized.

**REPUBLICAN NATIONAL COMMITTEE LETTER**

Mr. REID. Mr. President, when President Bush was elected, he said that he wanted to be a uniter and not a divider. We took him at his word. The last 4 years have not worked out well. There has not been much unity in Washington, but a lot of divisive matters come before us and the tone has not been good.

The day after this last election when the President was reelected he called me when I was in Las Vegas and we had a very pleasant meeting on the telephone. He said he wanted to get along. He wanted to set a better tone in Washington.

This past Wednesday, the State of the Union Message was given. The President said the same thing there—he wanted to get along, to cooperate.

Today, the newspaper of Capitol Hill, "Rollcall," has a front page story: "RNC Turns Up Heat on Reid." It is a big story. It says among other things that they are sending out a 13-page research document, the RNC, the Republican National Committee, "a 13-page research document today to roughly 1 million people . . . detailing Reid's . . ."—what they don't like about me, saying what they want to do is just like they did to Daschle.

I don't think the President of the United States can say one thing and then do something else and get away with it. Is this how he wants to be a uniter, not divider? He cannot distance himself from the Republican National Committee. The Republican National Committee is his committee. He picks the chairman. He picks everybody there. He raises the money for it. It is the President's organization. He can't say one thing to the American people and to the Democratic leader of the Senate and then send out scurrilous letters saying that I am a bad guy, in great detail. I mean, is President George Bush a man of his word? Is what he is telling the American people just a charade?

Last Wednesday, just a few days ago, as I have mentioned, he said that he was going to reach out to the Democrats. This is a strange way to reach out.

Mr. President, I call upon you to repudiate this document, to tell the Republican National Committee don't mail it. Tell them not to send it. We haven't dealt with one piece of legislation here on the Senate floor, yet they are sending out, to a million people, what they think is to have REID roughed up a little bit.

What politics is all about, what government is all about, is honesty, integrity—not phoniness. Why didn't he stand and tell the American people last Wednesday that one of the first items of business we were going to do in Washington is send out a hit piece on the Democratic leader? If he is honest with the American people, why doesn't he just call it the way it is? It is going to be politics as usual, directed from 16th and Pennsylvania Avenue. Honesty, integrity and truth—if those are the watch words of this President, he will repudiate what his Republican National Committee is doing.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Maine is recognized.

Ms. COLLINS. I thank the Chair.

(The remarks of Ms. COLLINS pertaining to the introduction of S. 300 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Rhode Island is recognized.

#### IN HONOR OF STANLEY KIMMITT

Mr. REED. Madam President, I rise to commemorate the life and accomplishments of Stan Kimmitt, former Secretary of the Senate Majority and Secretary of the Senate, retired Army colonel and loving husband and father. On December 7, 2004, the Senate and the Washington community lost a devoted friend, one whose work honored the institution of the Senate and the value of bi-partisanship.

Throughout his careers in the military, political and corporate worlds, Stan Kimmitt dedicated his life to public service and democratic ideals. He first served our Nation in WW II and Korea, then as Majority Leader Mike Mansfield's senior staff member for 11 years and later for 5 years as Secretary of the Senate and finally as a consultant.

Stan was born on April 5, 1918 in Lewistown, MT. His father was a wheat farmer until drought destroyed the family's crop in the early 1920s. The family moved to Great Falls, MT, where Stan spent the remainder of his childhood. He enrolled at the University of Montana where he took an Asian history class taught by a man who would be very influential in his life, a man named Mike Mansfield.

In June of 1941, Stan was drafted out of college and began what would become a 24-year Army career. He was sent to Europe where he was a combat commander and fought in the Battle of the Bulge. He crossed the bridge at Remagen and was part of the first U.S. division to occupy Berlin. Stan entered the Korean War as a first lieutenant, where he served as an artillery officer at Pork Chop Hill. After completing his bachelor's degree at Utah State University, he went back to the Army to serve in Europe. The Army later assigned him to serve as secretary of the Army office of legislative liaison to the Senate, his first of three terms in this post. During his assignment to the Senate, he renewed his connection to the Senate Majority Leader from Montana, Senator Mike Mansfield.

By the time Stan retired from the Army in 1966 as a colonel, he was decorated with the Silver Star, the Legion of Merit, the Bronze Star for Valor with Three Oak Leaf Clusters and was inducted into the Field Artillery Officer Candidate School Hall of Fame.

He approached his career in the Senate in the same manner with which he approached his commitment to the

Army, with integrity, with fairness, and with an enormous deal of respect for the institution. Stan was always troubled by the partisanship in Washington because he thought of the institution as a family. He honored the principles of the party, but always knew that it was part of a bigger picture. He was grateful for the opportunity to have served Senator Mansfield but, above all, Stan was grateful to have served in the United States Senate.

Even after many years in Washington, true to his roots, Stan always considered himself "a gopher-shooting Montana boy at heart." I had the privilege of knowing Stan through his sons Robert, Jay and Mark, they were contemporaries of mine at West Point.

They established extraordinary careers in their own capacity. Bob Kimmitt was former Ambassador to Germany under President Bush. Jay Kimmitt served this institution as a member of the Appropriations staff. Mark Kimmitt is today a general officer to the U.S. Army.

Stan had a large family. He leaves behind his wife Eunice, his 5 children, his 12 grandchildren, and 1 great-grandchild. I extend my deepest condolences to his friends and his family. Stan Kimmitt served this Nation with distinction; the Senate shall miss such a devoted friend and such a humble servant.

I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

#### CLASS ACTION FAIRNESS ACT

Mr. FRIST. Madam President, in about 40 minutes or so we will be formally bringing to the floor S. 5, the Class Action Fairness Act. There will be opening statements over the course of the afternoon. We will not be submitting amendments specifically on the bill today or voting on the bill this afternoon, but I would like to take a few minutes and introduce my strong support on this important bill, a bill we have worked on for several years now in a bipartisan way. It is important, I believe, to put the debate in context.

This particular bill gives us the first opportunity to take a major step forward on this floor to halt lawsuit abuses that occur across the country. Every 2 seconds a lawsuit is filed in America—every 2 seconds. In 2002, that added up to 16.3 million lawsuits filed in State courts.

In the past decade, litigation has skyrocketed, creating the most expensive litigation system in the world. In 2003, the tort system cost an incredible \$246 billion. In other words, that is approximately \$845 for every man, woman, and child.

At the current rate of increase, it is estimated that the per capita cost of

the tort system will go up to \$1,000 per person by 2006. That is \$4,000 for a family of four. Nationally, the tort system costs more than the entire economic output of my own State of Tennessee.

The result of this runaway litigation? Clogged courts, wasted taxpayers' dollars, restrained competitiveness, and unjust settlements that award huge attorney fees at the expense of injured victims who often get a coupon or nothing at all.

Businesses spend millions of dollars each year defending themselves against lawsuits, many of them frivolous.

Home Depot is now one of America's largest and most successful companies, but Bernie Marcus, who cofounded Home Depot back in 1978, says his business could never have gotten off the ground in the current legal climate. That is thousands of jobs that would have never been created, millions of products never sold, and prices that would never have been introduced for the benefit of consumers.

Contrary to popular perception, small businesses, which are the engine of economic growth in our country, are the ones which are hardest hit by the lawsuit industry—not the large corporations. Small businesses take in 25 percent of America's business revenue but they bear 68 percent of the business tort costs.

Let me repeat: Small businesses take in 25 percent of America's business revenue but they bear 68 percent of the tort costs.

They spend a staggering \$88 billion a year on legal fees—\$88 billion that could be used to hire more workers, create more jobs, expand their businesses, or develop new products and services.

Many small businesses can't afford the legal burden, so they close up shop and jobs are lost—and the economy overall suffers.

Clearly, it is time for reform. We simply cannot afford the status quo. The cost of doing business in America keeps going up while respect for our legal system goes down.

That is why today, as a first step, we are tackling class action. We should consider focusing on other areas of lawsuit abuse, including medical liability, asbestos, and bankruptcy—and in due time we will do just that. But we are beginning with class action to help those injured by negligence who often receive little or nothing while their attorneys pocket millions.

Class action serves an important purpose in our justice system. We all know that. Class action lawsuits allow plaintiffs whose injuries are not big enough to justify the legal expense individually to combine their claims into one suit against a common defendant. This is an important and valuable tool to keep unscrupulous companies honest and to compensate legitimate victims.

But the system has gotten off track. Opportunistic attorneys are distorting